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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 593

LOUIS BALTHAZAR and DORETTA BALTHAZAR, his wife,

Plaintiffs-Appellants,

vs.

MARI, LTD., an Illinois corporation, and ALLAN I. BLAIR, JOHN BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois, as representative of all chief judges of Circuit Courts in the State of Illinois,

Defendants-Appellees.

On Appeal from a Decision of a Three Judge Court of the District Court of the Northern District of Illinois, Eastern Division

MOTION TO AFFIRM

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Appellees, Mari, Ltd. and Allan L. Blair, by their attorney, Maurice P. Raizes, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment and decree of the District Court be affirmed on the ground that the questions raised by Appellants have been resolved by several decisions of the Supreme Court of the United States which effectively set a precedent to the extent that the questions are so unsubstantial as not to warrant further argument.

QUESTIONS PRESENTED

Is the Illinois statute which provides for the sale of real estate for nonpayment of delinquent real estate taxes and subsequent issuance of a tax deed if no redemption is made within the statutory period and a judicial determination that due notice was served, constitutional within the meaning of the due process clause and the equal protection clause of the Fifth Amendment of the United States Constitution?

STATUTES INVOLVED

Although appellants in their appendix B to the Jurisdictional Statement list statutes that are pertinent to the instant cause, they fail to list *all* of the relevant statutes so that this Court will be fully aware of the statutory scheme involved with regard to the sale of real estate for delinquent taxes, including the requisite notices served, the redemption rights, and the procedure for final issuance of a tax deed where applicable.

Rather than attempting to supplement appellants' incomplete list piecemeal, attached in Appendix A to this Motion are the following relevant sections of the Illinois Revenue Act of 1939 as amended which provide a more complete picture of the statutory scheme: 225, 230, 235, 237, 240, 245, 247, 248, 263, 266, 268, 270 and 271 Ill. Rev. Stat. 1961, Chapter 120, Secs. 706, 711, 716, 718, 724, 726, 728, 729, 741, 744, 747, 748, 751, and 752, respectively.

STATEMENT OF THE CASE

This matter involves a direct appeal from a final judgment and decree entered on June 21, 1967, by a District Court composed of three judges specially constituted pursuant to 28 USC § 2284, whereby appellants' complaint was dismissed for failure to state a cause of action.

The pertinent facts are reflected from the allegations of the complaint (which for this purpose must be admitted as true since the dismissal is based on a motion to dismiss) and other evidence introduced during the pendency of the case.

Appellants owned a building in Chicago, Illinois containing three apartments, plus a barber shop located in the basement. They had an investment in this property of approximately $16,000.00 comprising $12,000.00 actually paid for the original purchase, plus interest paid. Appellants failed to pay the 1961 general real estate taxes for the property which amounted to approximately $[illegible].

Thereafter, pursuant to a judgment and order of sale, the property was sold at a public sale for nonpayment of these taxes to a predecessor in interest of appellee, Mary Lee Peterson. Pursuant to the provisions of the Illinois statutes, the purchaser paid out at the sale was the full amount of the tax delinquency for the years and the successful bidder was the party who agreed to accept the least amount of penalty in case of redemption. Statutory notices which informed appellants of the time of their right to redeem or their right to contest the regularity of a tax deed were served, received and read by appellants. Appellants knowingly

ignored these notices and refused to redeem from the tax sale within the statutory period of redemption (which consisted of two years plus an additional extension of nine months, totaling two years and nine months).

Consequently, the predecessor in interest to Marx Ltd. paid the subsequent delinquent taxes due on the property and after a judicial determination of compliance with all statutory prerequisites was issued a tax deed for the premises.

Title was subsequently transferred to appellee, Marx Ltd. When Marx, Ltd. sought to evict appellants from the premises, they filed the instant suit to restrain such eviction and to further declare the statutory provisions for real estate tax sales to be unconstitutional on the basis that there is no public sale whereby the surplus value (the market value of the property minus the existing liability of the taxing authorities) could be returned to an owner. The complaint alleged a class action.

The Illinois statutory scheme pertaining to tax sales of delinquent real estate taxes was ably set forth in the brief of the amicus curiae filed in the District Court and may be summarized as follows:

The annual sale of tax delinquent real estate in Illinois is commenced by publication by the county collector of the county involved of a list of the delinquent properties and on the date stated in the publication application is made for judgment and order of sale in the Circuit Court of the county involved (35 and 236 of the Revenue Act of 1939, as amended; Ill. Rev. Stat. 1969, Chap. 120, 716 and 716, respectively; App. A, pp. 1a and 16a). The court rules for filing objections to the sale and upon expiration of the time, the court enters a judgment against all real estate to which objection has not been filed and the sale con-

mences (§235 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, §716, App. A, p. 18).

At least five days prior to the date the sale begins, the county collector is required to give notice of such fact and the date of the sale by mail to each delinquent tax debtor (§230 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, §711, App. A, p. 17). The real estate is offered for sale by parcels at public bidding for the amount of all taxes and interest thereon and is awarded to the bidder bidding the least amount of penalty which he will accept upon redemption (not to exceed 12% for each six months or fraction thereof during the two year redemption period), and a certificate of purchase issues to the successful bidder (§§246, 247 and 248 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, §726, 728 and 729, App. A, pp. 22, 23, 24).

The period of redemption of the tax sale is two years from the date of the sale, but the tax purchaser may extend the period of redemption by not more than one year (§263 and 266 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, §734 and 737, App. A, pp. 25, 30, Article IX, Section 3 of Illinois Constitution, App. B, p. 38).

In order to obtain a tax deed, if no redemption has been made within not more than five nor less than three months prior to the expiration of the period of redemption, the tax purchaser must file a petition in the circuit court of the county involved, stating on what date he will unless redemption is made, appear, and make application for an order directing a tax deed be issued (§268 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, §747, App. A, p. 30). Thereafter, not more than five nor less than three months prior to the expiration of the period of redemption, notice must be *personally* served on the owner and parties interested if they can with due diligence be found within the county. Only

if such owner cannot be found within the county is substituted service permitted (§263 and 266 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, 744 and 747, App. A, pp. 28, 30). Such notice must inform the recipient that the real estate was sold, in whose name it was last assessed, the description, what taxes were included, when the period of redemption will expire, the fact of the filing of the petition in the circuit court, and the date the matter is set to be heard in court (§263 and 266 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, 744 and 747, App. A, pp. 28, 30).

In addition, pursuant to Circuit Court of Cook County Rule 12.5, a similar but simplified notice is independently mailed by certified mail to the owners and interested parties by the circuit court clerk.

If redemption is still not made within the permitted time, then the tax purchaser may appear in the circuit court of the county at the time designated in the notice and make proof of compliance with the law. If the court is satisfied that the tax purchaser has complied with all statutory prerequisites, the tax purchaser presents the court with a transcript of all of his proof, and secures the entry of an order directing the issuance of a tax deed which is issued by the county clerk (§266 and 268 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, 747 and 749, App. A, pp. 30, 32).

Although the laws prohibiting the annual sale of real estate for nonpayment of taxes have been amended from time to time, the present system of publication of the delinquent list and application for a judgment and order of sale was first enacted in 1839 and has been part of the laws affecting ownership of Illinois real estate since that date for a period of over 130 years. Indeed, this system is even

embodied in the Illinois Constitution (Illinois Constitution of 1870, Article IX, Sections 1 and 3, Appendix B, p. 381).

Appellants do not contend that there was a failure to follow any of the statutory provisions above described, including service of the various notices required by law. In fact, appellants have admitted that they not only received and read the notices, but appellant Louis Balthazar, a self-employed barber, stated in his deposition that he did not intend to pay the taxes until he was forced to do so.

The District Court, based on the precedents set by this Court, found the statutes involved to be constitutional and dismissed the complaint for failure to state a cause of action.

ARGUMENT

THE DECISION OF THE DISTRICT COURT WAS CORRECTLY BASED ON PRECEDENTS SET BY DECISIONS OF THIS COURT

In *Nelson v. New York*, *ante*, p. 108, this Court again recently reiterated and upheld the principle that States only need to give property owners adequate notice of their tax delinquency and an opportunity to be heard in order to comply with due process. The District Court relied and relied upon the decision in this case in entering its decree dismissing the complaint herein.

In order to offset this clear and determinative precedent, in their Jurisdictional Statement, Appellants have contended that the District Court misapprehended the *Nelson* case. They achieve this result by lifting from context certain language of the *Nelson* case at page 110 wherein this Court in part stated: "But we do not have here a statute which absolutely precludes an owner from obtaining surplus and equity." Appellants state this language would cause this Court to reach a result different from the result reached in *Nelson*. Appellants' contention is not well founded.

It is obvious that this language was placed in the *Nelson* decision for the sole purpose of showing that the decision was consistent with prior New York state court decisions which interpreted their statutes to give the owner of the property the right to avail himself of surplus value. It was not intended to mean that the failure to provide for surplus value rendered the statute unconstitutional.

This fact becomes even more obvious when the balance of the opinion is examined. In fact, in the above-quoted which appellants have taken out of context, in *Nelson* this Court found it necessary to differentiate the case of *United States v. Taylor*, 104 U.S. 216.

In distinguishing *Taylor*, this Court observed the statute there involved had never been construed in the case of *United States v. Taylor*, *supra*, to require payment

of surplus value to the owner. Thus, the Court held the problem was to be treated as "purely one of statutory construction without constitutional overtones."

It was only natural for this Court to comment on the possibility of the surplus value being obtained by the taxpayer in the *Nelson* case since the statutory construction in the New York courts also imposed this factor upon the particular statute involved in *Nelson*. In light of *United States v. Taylor*, the Court had to be sure that the taxpayer in *Nelson* was allowed all of his rights which in that case included the right to a surplus as interpreted by the New York courts.

However, the actual basis of the holding in *Nelson*, the gist of the constitutional overtones, was that in being at a taxpayer had a right to that he could receive surplus value; this is all that is necessary under the Constitution whether or not he availed himself of such opportunity. There is no language in the *Nelson* decision that states a taxpayer has a constitutional right to a specific taxpayer surplus value nor does this Court in any way imply that if the New York court had not construed the particular statute to allow recovery of surplus value such a denial would have been a violation of the taxpayer's constitutional rights.

Had this Court decided such an unknown, there would have been no necessity in making particular mention that *United States v. Taylor* was distinguishable due to the fact that the case involved statutory construction rather than a constitutional right.

It is therefore clear that the holding of *Nelson* is that reasonable notice must be served on the taxpayer in order to enable him to protect his rights. It says right under that statute provided for the recovery of surplus value, that

notice must be served, but there is no constitutional requirement of surplus value—only a right to be notified of what civil rights are available.

AS WAS HELD BY THE OPINION OF THE DISTRICT COURT, THE ILLINOIS STATUTORY SCHEME AFFORDS REASONABLE OPPORTUNITY FOR THE TAXPAYER TO PROTECT HIMSELF FROM FORFEITURE AND SERVES A DESIRABLE END PURPOSE OF EFFECTING THE COLLECTION OF TAXES

It is unfortunate when a person loses his property due to nonpayment of taxes, but in cases as in the instant case, where he has been afforded every opportunity to make a redemption and has *knowingly failed to do so*, the taxpayer should not be heard to complain. After all, owning property carries certain obligations and responsibilities that have been completely ignored in Appellants' argument. As Mr. Justice Walter V. Schaefer of the Illinois Supreme Court said in *Nye v. Smith*, 33 Ill. 2d 466 (1965), at page 470:

> "A property owner cannot be heard to say that he is not aware that annual taxes are recurrent charges against his property, and that his failure to meet his obligation increases the burden imposed on other taxpayers."

It is apparent that the legislature of the State of Illinois considered the various factors in arriving at a happy medium in devising the statutory scheme involved. On the one hand it protected the individual taxpayer by requiring that ample notice be given, making the redemption fee the least with the least penalty, and allowing a reasonable redemption period. On the other hand, by making delinquent taxpayers known it timely payment of the taxes is not made they may lose their property, it protected both the interest of the State in effecting collections of revenue and also the interest of those people who promptly pay their taxes.

Appellant suggests several alternative schemes which they would deem more equitable. Appellant apparently desires this Court to rewrite the Illinois statutory scheme in order to eliminate any potential profit for a tax purchaser. As the District Court correctly held, these remedies should be left to the State legislature and not the Courts.

CONCLUSION.

Wherefore, it is respectfully prayed that this Court affirm the judgment and decree of the District Court in dismissing the complaint herein.

Respectfully submitted,

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APPENDIX "A".

STATUTES INVOLVED.

706. Advertisement and application for judgment.] § 225. At any time after the first day of September next after all of such delinquent taxes on lands and lots shall become due in any year, or next after any taxes are paid under protest in any year, the Collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots, and for judgment fixing the correct amount of any tax paid under protest, in a newspaper published in the township or road district, as the case may be in which the real estate on which the delinquent taxes are due, is located and if there is no such newspaper published in the township or road district, then in some newspaper in the same county as the township or road district, to be selected by the county Treasurer: Provided, however, where the real estate is situated in a city the population of which exceeds 500,000 inhabitants such advertisement may be in any newspaper published in the same county, and where the lands or lots are situated in an incorporated town which has superseded a civil township then such advertisement shall be in a newspaper published in such incorporated town or if there is no such newspaper published in such incorporated town, then in a newspaper published in the county in which such lands or lots are located: Provided, further, that in the 10 years next following the completion of a general reassessment of real property in any county containing 500,000 or more inhabitants, made pursuant to an order of the Department, such publication shall be made not sooner than 10 days nor more than 90 days after the date when all unpaid taxes on lands and lots shall become delinquent and shall begin to bear interest. Said advertisement shall be

once published at least 10 days previous to the day on which judgment is to be prayed, and shall contain a list of the delinquent lands and lots upon which the taxes or any part thereof remain due and unpaid, other than those upon which the persons liable for the taxes thereon have in writing waived such advertisement, the names of owners, if known, the total amount due thereon, and the year or years for which the same are due. No list of the lands and lots upon which taxes shall have been paid in full under protest, the amounts so paid on, nor the names of the persons paying the same, shall be included in the list. Such collector shall give notice that he will apply to the circuit court on a specified day for judgment against the lands or lots for the taxes, and costs, and for an order to sell the lands and lots for the satisfaction thereof, and for a judgment fixing the correct amount of any tax paid under protest; and shall also give notice that on the . . . Monday next succeeding the date of application all the lands and lots for the sale of which an order shall be made, will be exposed to public sale at the building where the seat of county government is located, for the amount of taxes, and cost due thereon; and the advertisement published according to the provisions of this section shall be deemed to be sufficient notice of the intended application for judgment and of the sale of lands and lots under the order of the court, or for judgment fixing the correct amount of any tax paid under protest. Where the publisher of any paper that may have been selected by the collector shall be unable or unwilling to publish such advertisement, the collector shall select some other newspaper, having due regard to the circulation of such paper.

Provided, that in all cities, villages and incorporated towns in counties containing a population exceeding 500,000 inhabitants by the last preceding census of the United States or of this State, separate advertisements may

be made giving notice of an intended application for judgment and for an order of sale on account of delinquent special assessments at any time after the first day of August, after such special assessments shall have become delinquent, the procedure in such case to be in all other respects, except as to the time of making advertisement and application for judgment and sale, the same as in the case of delinquent general taxes. There shall not be included in the advertisement and application for judgment for sale provided by this section any lands or lots which are included in the advertisement and application for judgment for sale provided by section 235a of this Act. As amended by act approved May 19, 1965. L. 1965, p. 631.

* * * * *

711. Notice to owner before tax sale.] § 230. In all cases except where lands or lots have been forfeited to the State for non-payment of taxes or in counties having a population of 500,000 or more inhabitants for non-payment of taxes or special assessments two or more years in succession next preceding the application for judgment and order of sale, the county collector shall at least five days before the date of sale of delinquent lands or lots upon which the taxes or in counties having a population of 500,000 or more inhabitants upon which the taxes or special assessments remain due and unpaid, send a notice by mail to the owner, if known, or if not known, to the person shown by the collector's book to have paid the taxes or in counties having a population of 500,000 or more inhabitants, the taxes or special assessments on such lands or lots for the previous year, giving notice of application for judgment and sale of such lands or lots, and date of sale, describing the lands or lots, and the amount of taxes or in counties having a population of 500,000 or more inhabitants the amount of taxes or special assessments, together with interest and costs, due thereon.

(Appendix "A")

* * * * *

716. Proceedings by court—Form of order—Cure of error or informality.] § 235. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: Provided, that no person shall be permitted to offer any such defense unless such writing specifying the particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt, showing that all taxes to which objection is made shall have been paid under protest pursuant to the provisions of section 194 of this Act; and it shall be the duty of all tax collectors to furnish such duplicate receipt without charge.

If any party objecting to any tax paid under protest is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot or part of a tract or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

Whereas, due notice has been given of the intended application for a judgment against said lands and lots, and no sufficient defense having been made, or cause shown why judgment should not be entered against said lands and lots, for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for

the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract, or tracts, or lots of land, or parts of tracts or lots (as the case may be), in favor of the People of the State of Illinois, for the sum annexed to each, being the amount of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

Said order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission or defective act of any other officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected,

supplied and made to conform to law by the court, or by the person (in the presence of the court) for whose neglect or default the same was occasioned. Provided, that where separate advertisement and application for judgment and order of sale is made on account of delinquent, special taxes or special assessments in all cities, villages and incorporated towns in counties containing a population exceeding 500,000 inhabitants by the last preceding census of the United States or of this State, and in cities, villages and incorporated towns in other counties in which the county board by resolution has extended the time in which the return, required in section 209, may be made, the procedure shall in all respects be the same as in this section prescribed, except that there shall be two separate judgments and orders for sale, one on account of delinquent special taxes and special assessments and the other on account of delinquent general taxes. As amended by act approved May 23, 1957. L. 1957, p. 249.

* * * * *

718. Appeal from tax judgment.] § 237. Appeals from the judgment of the court may be taken to the Supreme Court as in other civil cases by the party appealing filing a notice of appeal within thirty days from the rendition of such judgment. But no appeal from any judgment for the sale of lands or lots for taxes shall operate as a supersedeas unless the party filing notice of appeal shall, at the time of filing the notice of appeal, deposit with the county collector an amount of money equal to the amount of the judgment and costs. If in case of an appeal, the judgment shall be affirmed in whole or in part, the Supreme Court shall enter judgment for the amount of the taxes with damages, not to exceed ten per cent, and order that the amount deposited with the collector, as aforesaid, or paid under protest or so much thereof as may be necessary, shall be credited upon the judgment so rendered, and execution shall issue for

the balance of said judgment, damages and costs. The Clerk of the Supreme Court shall transmit to said county collector, a certified copy of the order of affirmance, and it shall be the duty of the collector, upon receiving the same, to apply so much of the amount deposited with him, as aforesaid, or paid under protest as shall be necessary to satisfy the amount of the judgment of the Supreme Court, and to account for the same as collected taxes. If the judgment of the circuit court shall be reversed and the cause remanded for a rehearing, and if upon the rehearing, judgment shall be rendered for the sale of the lands or lots for taxes, or any part thereof, or fixing the correct amount of any tax paid under protest, and such judgment be not appealed from, the clerk of the circuit court shall certify to the county collector the amount of such judgment, and thereupon it shall be the duty of the county collector to certify to the county clerk the amount deposited with him, as aforesaid, or paid under protest, and the county clerk shall credit the said judgment with amount of such deposit, or payment under protest, or so much thereof as will satisfy the judgment, and the county collector shall be chargeable with, and accountable for, the amount so credited, as collected taxes. Nothing herein contained shall be construed as requiring an additional deposit in case of more than one appeal being prosecuted in said proceedings. If upon a final hearing, judgment shall be refused for the sale of lands or lots for the taxes, or any part thereof, or judgment fixing the correct amount of any tax shall be rendered for less than the amount thereof paid under protest, the collector shall pay over to the party who shall have made such deposit or payment, or his legally authorized agent or representatives, the amount of the deposit or payment, or so much thereof as shall remain after the satisfaction of the judgment against the premises in respect of which such deposit or payment shall

have been made. As amended by act approved May 19, 1965. L. 1965, p. 631.

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724. Manner of conducting sale.] § 243. The collector, in person or by deputy, shall attend at the court house in his county, on the day specified in the notice for the sale of real estate for taxes, and then and there, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, proceed to offer for sale, separately and in consecutive order, each tract of land or town or city lot in the said list on which the taxes, special assessments, interest or costs have not been paid. Provided, however, that in any county containing 500,000 or more inhabitants such offer for sale shall be made between the hours of eight o'clock in the forenoon and eight o'clock in the evening: and the collector's office shall be kept open during all hours in which such sale shall be in progress. The sale shall be continued from day to day, until all the tracts or lots in the delinquent list shall be sold or offered for sale: Provided, however, that any city, village or town interested in the collection of any tax or special assessment, may, in default of bidders for same, withdraw frrom collection any such special assessment levied against any such tract of land or lot by the corporate authorities of such city, village or town, and in case of such withdrawal there shall be no sale of such tract of land or lot on account of the delinquent special assessment thereon.

• • • • •

726. What bid accepted.] § 245. The person at such sale offering to pay the amount due on each tract or lot for the least percentage thereon as penalty, shall be the purchaser of such tract or lot: Provided, that no bid shall be accepted for a penalty exceeding twelve per cent (12%) of the amount of such tax or special assessment.

(Appendix "A")

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728. Payment by purchaser—Failure to complete purchase.] § 247. The person purchasing any tract or lot, or any part thereof, shall forthwith pay to the collector the amount charged on such tract or lot, and on failure so to do, the tract or lot shall be again offered for sale in the same manner as if no such sale had been made; and in no case shall the sale be closed until payment is made, or the tract or lot again offered for sale. Provided, in counties having a population of 500,000 or more, as shown by the last United States census, only the taxes, special assessments, interest and costs as advertised in the sale shall be required to be paid forthwith in cash. The general taxes charged on the land remaining due and unpaid, not included in the advertisement, shall be paid by the purchaser within 10 days after the sale, provided that upon payment of the fee provided by law to the County Clerk (which fee shall be deemed part of the costs of sale) the purchaser may make written application within such period of 10 days to the county clerk for a statement of all such taxes, interest and costs and an estimate of the cost of redemption of all forfeited general taxes, as are not included in the advertisement and after obtaining such statement and estimate and an order on the county collector to receive the amount of forfeited general taxes, if any, the purchaser shall pay to the county collector all such remaining taxes, interest and costs, and the amount necessary to redeem the forfeited general taxes, who shall issue the purchaser a receipt therefor. Any delay in providing the statement or in accepting payment, and delivering receipt therefor, shall not be counted as a part of the 10 days. When the receipt of the collector is issued a copy shall be filed with the county clerk and the county clerk shall include the amount shown in such receipt in the amount of the purchase price of such land in the certificate of purchase.

and thereupon the purchaser shall be entitled to a certificate of purchase. If a purchaser fails to complete his purchase as herein provided, the purchase shall become void, and be of no effect, but the collector shall not refund the amount paid in cash at the time of the sale, except in cases of sale in error. Such amount shall be treated as a payment and distributed to the taxing bodies as other collections are distributed. The lien for taxes for such amount, however, shall remain on the land, in favor of the purchaser, his heirs or assigns, until paid with 5% interest on such amount from the date the purchaser paid the same, and the amount and fact of such ineffective purchase shall be entered in the tax judgment, sale, redemption and forfeiture record opposite the land upon which the lien remains. No redemption shall be made without payment of this amount for the benefit of the purchaser, and no future sale of the land shall be made except subject to the lien of such purchaser. This section shall not apply to any purchase by any city, village or town in default of other bidders at any sale for delinquent special assessments. As amended by act approved Aug. 21, 1961. L. 1961, p. 3755.

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729. Certificate of purchase—Withdrawal or forfeiture of special assessments in counties of 500,000 or more.] § 248. The county clerk shall make out and deliver to the purchaser of any lands or lots sold as aforesaid a certificate of purchase, to be countersigned by the collector, describing the land or lots sold as the same was described in the delinquent list, date of such sale, the amount of taxes, special assessments, interest and cost for which the same was sold and that payment has been made therefor. If any person shall become the purchaser of more than one tract, block, lot or piece of real estate owned by one party or person, such purchaser may have the whole or one or more of them included in one certificate, but separate certificates shall

be issued in all other cases. Such certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee or his legal representatives, all the right and title of the original purchaser.

In counties having a population of 500,000 or more inhabitants, the county clerk, upon request of the city comptroller or other municipal officer authorized by the city council or board of trustees of any city, village or town to make such request shall issue to such city, village or town, a certificate of withdrawal or forfeiture countersigned by the county collector for each lot, tract or parcel of land withdrawn from collection or forfeited for nonpayment of any special assessment. Such certificate of withdrawal or forfeiture shall describe the land or lots withdrawn or forfeited as the same was described in the delinquent list, the date of such withdrawal or forfeiture, and the amount of the special assessment, interest and costs.

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734. Time and conditions of redemption.] § 253. Real property sold under the provisions of this Act may be redeemed at any time before the expiration of 2 years from the date of sale, by payment in legal money of the United States to the county clerk of the proper county, the amount for which the same was sold, together with the amount of the penalty bid at such sale, unless the property has been purchased pursuant to Section 272 of this Act, in which event the penalty bid shall be 12%, if redeemed at any time before the expiration of 6 months from the day of sale; if between 6 and 12 months, the amount for which the same was sold, together with twice the amount of the penalty bid; if between 12 and 18 months, the amount for which the same was sold, together with 3 times the amount of the penalty bid; if between 18 months and 2 years, the amount for which the same was sold, together with 4 times the amount of

the penalty bid at said sale. The person redeeming shall also pay the amount of all taxes and special assessments accruing after such sale with 7% penalty thereon, for each year or portion thereof intervening between the time of the payment of the subsequent tax or special assessment and the time of redemption, in all cases where the purchaser at the tax sale, or his assignee, pays such subsequent tax or special assessment after it has become delinquent or, after the holder of the certificate of purchase has filed a petition for a tax deed pursuant to Section 266 of this Act; also, all fees paid to the registrar of titles of the proper county incident to registering tax certificates in compliance with "An Act concerning land titles," approved May 1, 1897, as heretofore and hereafter amended, and it is the duty of the county clerk to include in the certificate of redemption the amount of the subsequent taxes, special assessments and fees of the registrar of titles paid by the purchaser or holder of the tax certificate: Provided, however, that the county clerk shall not be required to include any subsequent taxes, special assessments or fees of the registrar of titles in his certificate of redemption, nor shall the payment thereof be a charge upon the land sold for taxes, unless the purchaser, assignee, or holder of the tax certificate of sale shall have filed and have posted by the county clerk on the tax judgment, sale, redemption and forfeiture record, before redemption, an official, original or duplicate receipt for the payment of such subsequent taxes, special assessments or fees of the registrar of titles, and it shall be the duty of the tax collector and registrar of titles to furnish such duplicate receipts. The person redeeming shall also pay all costs and expenses of receivership pursuant to Section 253a of this Act to the extent that such costs and expenses exceed any income from the property in question, provided such costs and expenditures have been approved by the court appointing such

receiver and provided that a certified copy of such order of approval is filed and posted by the county clerk on the tax judgment, sale, redemption and forfeiture record before redemption. In the event that income should exceed expenditures, such net income is to be deposited with the clerk of the court ordering the tax sale and shall be distributed upon court order to the owner or owners of the property in question in the proportions as determined by said court.

In the event that the property in question shall not be redeemed, no deficiency judgment shall be taken on account of said receivership proceedings, against the owner or owners of the property.

Such real property may also be redeemed after the expiration of 2 years from the date of sale, until expiration of the extended period of redemption, by payment in legal money of the United States to the county clerk, of the amount for which the said property was sold, the penalties provided herein for the 2 years after sale together with interest thereafter at 6% per annum on the face amount of such tax sales, and subsequent taxes, special assessments, fees of the registrar of titles and costs and expenses of receivership paid by the purchaser as herein provided, and advertising fees and $5 costs. Tenants in common or joint tenants shall be allowed to redeem their individual interests in real property sold under the provisions of this Act in the same manner and under the terms specified in this Section for the redemption of other real property; any redemeption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited. As amended by act approved July 26, 1967. L. 1967, p. ....., S.B. No. 472.

(Appendix "A")

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744. Notice to owner, persons in possession and others —Extension of time for redemption.] § 263. No purchaser or assignee of such purchaser of real estate sold for nonpayment of general taxes or special assessments, shall be entitled to a deed until the following conditions have been complied with, to-wit: Such purchaser or assignee shall serve, or cause to be served, notice of such purchase, not less than 3 months prior to the date when the time of redemption, or extended time of redemption as hereinafter provided shall expire, upon the following persons: upon occupants or persons in actual possession of such real estate; upon the person in whose name the real estate was last assessed for general taxes, if, upon diligent inquiry, he or she can be found in the county: and upon the owners of or parties interested in such real estate, including trustees and mortgagees of record, if they can upon diligent inquiry be found in the county. If the person in whose name the real estate was last assessed for general taxes cannot upon diligent inquiry be found in the county, notice shall be sent by registered mail or certified mail, return receipt requested, to the address shown for such persons on the assessor's books. Such notice by registered or certified mail, return receipt requested, shall also be sent to the owners of or parties interested in such real estate, including trustees and mortgagees of record, provided such persons cannot upon diligent inquiry be found in the county. In such notices the purchaser, or his assignee, shall state when he purchased the real estate, in whose name last taxed, the description of the real estate he has purchased, what taxes or special assessments were included in the judgment or decree for which the real estate was sold, and when the time of redemption will expire.

If such owners of such real estate or the parties interested therein cannot be found in the county and the person in actual occupancy or possession is tenant to, or

in possession under the owners or the parties interested therein, then service of such notice upon the tenant or occupant or person in possession shall be deemed service upon such owners or parties interested. If no person is in possession or occupancy of such real estate, or if the person in whose name the same was last assessed for general taxes, upon diligent inquiry, cannot be found in the county, or if such owners of or parties interested in such real estate, including trustees and mortgagees of record, upon diligent inquiry, cannot be found in the county, then such purchaser or his assignee shall publish such notice, as to them, in some newspaper published in such county. If no newspaper is published in such county, then such notice shall be published in the newspaper that is published in this State nearest the county seat of the county in which such real estate is located. If such owners or parties interested are unknown to such purchaser or his assignee, then such publication, as to them, may be made to the unknown owner or parties interested as aforesaid. Such notice by publication shall be given 3 times, the first publication not more than 5 months, and the last publication not less than 3 months before the time of redemption expires. Such notice of publication shall include not to exceed one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where more than one lot, block, tract or piece of land is owned by one party or person, in which case all the lots, blocks, or tracts owned by such person may be included in one notice. The purchaser or assignee may extend the time of redemption for such real estate either before or after the expiration of 2 years from the date of sale for a period which will expire not later than 3 years from the date of the sale by filing with the county clerk of the county in which the real estate is located a written notice to that effect describing the real estate, stating the date of the sale and specify-

ing the extended time of redemption. If the time of redemption is extended, the purchaser or assignee must give the notices herein provided at the specified times prior to the expiration of the extended period of redemption. As amended by act approved July 22, 1965. L. 1965, p. 1982.

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747. Petition for issuance of tax deed—Filing fee—Notice—Order—Writ of assistance—Appeal—Liberal construction.] § 266. At any time within 5 months prior to the expiration of the time of redemption from the sale of any real estate for non-payment of taxes or special assessments, pursuant to judgment and order of sale on the County Collector's application for judgment and order of sale under the provisions of Section 225 of this Act, as amended, the purchaser or his assignee may file a petition in the circuit court in the same proceeding wherein the judgment of sale was entered upon which the sale was had, praying that the court direct the county clerk to issue a tax deed if the real estate is not redeemed from the sale. Such petition shall be accompanied by a filing fee of $15.00. Notice of the fact of filing the petition and the date on which the petitioner intends to make application for an order on the petition that a deed issue if the real estate is not redeemed from the sale shall be given to occupants, owners and persons interested in the real estate in the same manner as provided in Section 263, except that only one publication shall be required. The notice to occupants and the notice by publication shall be given not less than 3 months prior to the date fixed for making application that a deed issue. The purchaser or his assignee may, if he desires, insert in the notice or notices required by Section 263 the fact of filing the petition for a tax deed and the date on which he intends to apply in the circuit court for an order for a deed if the real estate is not redeemed from the sale, in which case the notice provided by this sec-

tion shall not be required. The county clerk shall be notified of the filing of the petition and any person owning or interested in the real estate may if he desires, appear in the proceeding. If the time of redemption expires and the real estate has not been redeemed from the sale and all taxes and special assessments which became due and payable subsequent to the sale have been paid and all forfeitures and sales which occur subsequent to the sale have been redeemed and the notices required by law have been given and the petitioner has complied with all the provisions of law entitling him to a deed, the court shall so find and shall enter an order directing the county clerk on the production of the certificate of purchase and a certified copy of said order, to issue to the purchaser or his assignee a tax deed. However, the court shall insist on strict proof of notice and, in the event due diligence is claimed, shall inquire into the facts of diligence, and shall require further that the evidence relative thereto be transcribed in all cases including default matters, and such transcript shall be made a part of the court order. If the court refuses to enter an order directing the county clerk to execute and deliver the tax deed, because of the failure of the purchaser to fulfill any of the above provisions, it shall order the return of the purchase price forthwith as in case of sales in error in all cases where the purchaser or his assignee has made a bona fide attempt to comply with the statutory requirements for the issuance of the tax deed. The court may, and upon application therefor shall, issue a writ of assistance to put the grantee in possession of the real estate and may enter such orders and issue such writs as may be necessary or desirable to maintain the grantee in possession of the real estate. Tax deeds issued pursuant to this Section are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such

order may be had under Section 72 of the "Civil Practice Act", approved June 23, 1933, as heretofore or hereafter amended, in the same manner, upon the same grounds and to the same extent as may be had under that Section with respect to final orders, judgments and decrees in other proceedings and the court shall consider defenses relating to questions of the notices required by Section 263 and the proof presented in the hearing required by this Section. This Section shall be liberally construed so that tax deeds herein provided for shall convey merchantable title. Tax deeds issued pursuant to this Section are subject to Section 266b of this Act. As amended by act approved July 26, 1967. L. 1967, p. ....., S.B. No. 472.

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749. Form of deed.] § 268. The deed so made by the county clerk under the official seal of the county shall be recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs and assigns, the title of the property therein described without further acknowledgment or evidence of such conveyance, and said conveyance shall be substantially in the following form:

State of Illinois
County of .....—ss.

Whereas at a public sale of real estate for the nonpayment of taxes, made in the county aforesaid, on the ..... day of ..... A. D. 19....., the following described real estate was sold, to wit: (here place description of real estate conveyed); and whereas, the same not having been redeemed from said sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Illinois necessary to entitle (insert him, her or them) to a deed of said real estate: Now, therefore, know ye, that I ....., county clerk of said county of

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..... in consideration of the premises and by virtue of the statutes of the State of Illinois in such cases provided, do hereby grant and convey unto ...., his heirs and assigns forever, the said real estate hereinbefore described.

Given under my hand and the seal of the County of ..... this ..... day of ....., A.D. 19.....

* * * * *

751. Deed as evidence—Payments on restoration of title.] § 270. Deeds executed by the county clerk as aforesaid are prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs or assigns, to the real estate thereby conveyed of the following facts: First—That the real estate conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law. Second—That the taxes or special assessments were not paid at any time before the sale. Third—That the real estate conveyed had not been redeemed from the sale at the date of the deed. Fourth—That the real estate was advertised for sale in the manner and for the length of time required by law. Fifth—That the real estate was sold for taxes or special assessments as stated in the deed. Sixth—That the grantee in the deed was the purchaser or assignee of the purchaser. Seventh—That the sale was conducted in the manner required by law. And any judgment for the sale of real estate for delinquent taxes, except as otherwise provided in this Section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment or decree, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions, the judgment itself is conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax or special assessments have been paid or

the real estate was exempt from general taxes under this Act or was not subject to special assessments: Provided, that any judgment or decree of court, in law or equity setting aside any tax deed procured under this Act, or restoring the owner of same to possession, shall provide that the claimant shall pay to the party holding such tax deed the following, to be estimated by the county clerk: All taxes and legal costs, as provided by law, with interest at 5% per annum, together with subsequent taxes and special assessments paid and the statutory fees and costs incurred: for the service of the notices provided by law which must be served by holders of certificates of sale to occupants, owners or parties interested in real estate sold for taxes, the sum of $3 for each lot, block, tract or piece of land, as listed, assessed and sold in one description; the filing fee in the circuit court: the actual cost paid to the county clerk for issuing the tax deed: the actual cost of recording the tax deed; $1 for publication fees for each lot, block, tract or piece of land as listed, assessed and sold in one description. No final judgment or decree of court in any case either at law or in equity or in proceedings under the Eminent Domain Act involving the title to or interest in land in which such party holding such tax deed shall have an interest or setting aside any tax deed procured under this Act shall be entered until the claimant shall make reimbursement to the party holding such tax deed and payments as herein provided in so far as it shall appear that the holder of such deed or his assignors shall have properly paid or be entitled to in procuring such deed. The county clerk is entitled to a fee of $10 for preparing the estimate of the amount required to redeem, and such estimate of the county clerk is prima facie evidence in all courts of the amounts due the tax title holder. As amended by act approved June 19, 1967. L. 1967, p. ....., H.B. No. 552.

(Appendix "A")

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752. When deed must be taken out—Judgment setting aside lien under certificate of sale.] § 271. Unless the holder of the certificate for real estate purchased at any tax sale under this Act takes out the deed in the time provided by law, and files the same for record within one year from and after the time for redemption expires, the certificate or deed, and the sale on which it is based, shall, from and after the expiration of such one year, be absolutely null and void with no right to reimbursement. If the holder of such certificate is prevented from obtaining such deed by injunction or order of any court, or by the refusal or inability of any court to act upon the application for a tax deed, or by the refusal of the clerk to execute the same, the time he is so prevented shall be excluded from computation of such time. Certificates of purchase and deeds executed by the clerk shall recite the qualifications required in this section.

If any city, village or town, interested in the collection of any tax or special assessment now holding or which shall acquire a certificate of sale for real estate purchased at a tax sale as herein provided, it shall not be required to take out a deed for such real estate but may preserve its lien under such certificate of sale, beyond the period of redemption herein fixed, by recording such certificate of sale or evidence thereof within 3 years from the date of such certificate in the office of the recorder of deeds of the county wherein such real estate is situated, or by presenting same for registration in the manner provided by law, to the registrar of titles in the case of land registered under "An Act concerning land titles," approved May 1, 1897, amended. The evidence of such certificate of sale for recording may be in substantially the following form:

(Appendix "A")

STATE OF ILLINOIS
COUNTY OF .....—ss

Whereas, at a public sale of real estate for the nonpayment of taxes, made in the county aforesaid, on the ..... day of ..... A.D. 19....., the following described real estate was sold to the (here place name of city, village, or town), to-wit: (here place description of real estate), for the delinquent special assessment (here place the special assessment warrant number and installment). Unless payment or settlement is made at the office of (here place proper city, village or town officer), the municipality on behalf of which the above lien or liens are created may at any time after 2 years from the date of sale, sell and assign the certificate of sale, and either the municipality or the assignee at any time after the 2 years may file a bill to foreclose or sue for the amount of such special assessment due.

Dated this ..... day of ..... A.D. 19.....

.....

(Proper Officer)

Any judgment or decree of court in law or in equity, setting aside the lien under the certificate of sale filed in accordance with this section shall provide that the claimant shall pay to the city, village or town, or its assignee holding such certificate of sale the following: The amount for which the same was sold, together with the amount of the penalty bid at the tax sale, if set aside before the expiration of 6 months from the day of sale: if between 6 and 12 months, the amount for which the same was sold together with twice the amount of the penalty bid; if between 12 and 18 months, the amount for which the same was sold together with 3 times the amount of the penalty bid; if between 18 months and 2 years, the amount for which the same was sold together with 4 times the amount of the penalty bid at the sale; and if

after 2 years, the amount for which the same was sold together with 4 times the amount of the penalty bid at the sale and interest thereafter at the rate of 5% per annum on the amount for which the same was sold, also costs of $5.

No final judgment or decree of court in any case either at law or in equity or in proceedings under the Eminent Domain Act involving the title to or interest in any land in which such city, village or town or its assignee holding such certificate of sale shall have an interest, or setting aside any lien under the certificate of sale filed under this Act shall be entered, until the claimant shall make such reimbursement to the city, village or town or its assignee holding such certificate of sale. The county clerk is entitled to a fee of $2 for preparing the estimate of the amount required to redeem, and such estimate of the county clerk is prima facie evidence in all courts of the amount due to such city, village or town or its assignee. As amended by act approved June 19, 1967. L. 1967, p. ...., H.B. No. 552.

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APPENDIX "B".

PERTINENT PORTION OF ILLINOIS CONSTITUTION.

ARTICLE IX

Revenue

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§ 4. The general assembly shall provide, in all cases where it may be necessary to sell real estate for the non-payment of taxes or special assessments for state, county, municipal or other purposes, that a return of such unpaid taxes or assessments shall be made to some general officer of the county having authority to receive state and county taxes; and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order or judgment of some court of record.

§ 5. The right of redemption from all sales of real estate for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate, for a period of not less than two years from such sales thereof. And the general assembly shall provide by law for reasonable notice to be given to the owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire: *Provided,* that occupants shall in all cases be served with personal notice before the time of redemption expires.

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